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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/632,233

07/30/2003

David F. Olker

200311687-1

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06/14/2006

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FORT COLLINS, CO 80527-2400

EXAMINER

MIZRAHI, DIANE D

ART UNIT

PAPER NUMBER

2165

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/632,233

Applicant(s)

OLKER ET AL.

Examiner

DIANE D. MIZRAHI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7-30-03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**III. DETAILED ACTION**

Claims 1-48 are presented for examination.

In response to communications filed on 4-24-06, the Claims 1-48 are pending in the application. Applicant's arguments have been reconsidered but are not deemed persuasive for the reasons set forth below. Especially, Applicant's remarks at pages 3-6 of the Amendment of April 24, 2006 which have been reviewed.

Applicant's claimed invention relates to "migrating file locks from one server to another".

Examiner asserts that Dana Miloushev et al. (US Publication No. 20040133652 and Miloushev hereinafter) teaches Applicant's claimed invention of "migrating file locks from one server to another".

The drawing objection of the office action dated January 25, 2006 is hereby withdrawn.

Regarding to the rejection of claims 1-48 under 35 USC 101, Examiner withdraws the 101 rejection for claims 1-30 and 41-48, but maintains the under 35 USC 101 rejection of claims 31-40, because these claims are directed to a non-statutory subject matter, specifically, the claims are not directed towards the final result that is "useful, tangible and concrete

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(See State Street, 149 F.3d at 1373-74 USPQ2d at 1601-02) and because the claims are directed to a non-statutory subject matter, specifically, directed towards "computer readable medium", not a computer-readable storage medium. Therefore, these claims are non-statutory.

Examiner maintains the rejection under 35 USC 102 (e) for Claims 1-48. The office action of January 21, 2006 clearly teaches the claimed, "file lock" (see Miloushev [0079] [0368] [0370] [0388] and the claimed, "adoptive server" (i.e. as the second file server as taught by Miloushev see [0080] [0251] [0368] [03740] [0388] for example) and for reasons explicitly address in the office action of January 21, 2006 see below:

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-48 are rejected under 35 U.S.C. 102(e) as being anticipated by Dana Miloushev et al. (U.S. Publication No. 2004/0133652 A1 and Miloushev hereinafter).

Regarding Claim 1, Miloushev teaches migrating tile locks from one server to another comprising: receiving a file lock indicator from a primary server[0135]; recording the file lock indicator[0442]; and conveying the file lock indicator[0442] to an adoptive server when the primary server is unavailable[0273-0274].

Regarding Claim 2, Miloushev teaches monitoring a file lock data-store on a primary server; and retrieving a client file lock indicator from the file lock data-store when a new client file lock indicator is detected in the file lock data-store [0166].

Regarding Claim 3, Miloushev teaches monitoring a file lock data-store comprises monitoring a network file system systems monitor directory [0295].

Regarding Claim 4, Miloushev teaches recording the file lock indicator comprises copying a client file lock description file to a predetermined data-store [0077] [0158] [0163].

Regarding Claim 5, Miloushev teaches the file lock indicator comprises creating a tile lock record according to a client file lock description file [0362] [0178] [0180].

Regarding Claim 6, Miloushev teaches the file lock indicator to an adoptive server comprises placing a client file lock indicator in a tile lock data-store on an adoptive Server (Figure 23b).

Regarding Claim 7, Miloushev teaches a client file lock indicator in a file lock data-store comprises copying a client file lock description file from a predetermined data-store to a network file system status monitor directory on an adoptive server (Figure 6, #620).

Regarding Claim 8, Miloushev teaches a client file lock indicator in a file lock data-store comprises: retrieving a file lock record; creating a client file lock description file according to the file lock record; and storing the client tile lock description tile in a network file system system monitor directory on an adoptive server[0082].

Regarding Claim 9, Miloushev forcing the adoptive server to recognize the conveyed file lock indicator [0442].

Regarding Claim 10, Miloushev at least one of restarting a network file system, restarting a network file system file lock

manager and its associated file lock monitor and triggering a file lock recovery sequence[0049][0135].

Regarding Claims 11-48, the limitations of these claims is similar in scope to the rejected claims above and are therefore rejected as set forth above.

Applicant's remarks are considered moot, and does not place the application in condition for allowance. Examiner asserts that "every limitation positively recited in a claims was given effect in order to determine what the subject matter that the claim defines" In re Wilder, 166 USPQ 545, 548 (CCPA 1970) and that Examiner believes that claims 1-48 are not allowable over the prior art of record cited in the Final Office Action dated June 8, 2006).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated

from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**Other Prior Art Made of Record**

The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. U.S. patents and U.S. patent application publications will not be supplied with Office actions. Examiners advises the Applicant that the cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site ([www.uspto.gov](http://www.uspto.gov)), from the Office of Public Records and from commercial sources. For the use of the Office's PAIR system, Applicants may refer to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane D. Mizrahi whose telephone number is 571-272-4079. The examiner can normally be reached on Monday-Thursday.

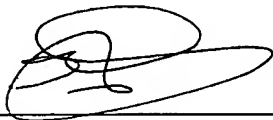
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be



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reached on (571) 272-4146. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 305-3900 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



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Diane Mizrahi  
Primary Patent Examiner  
Technology Center 2100

June 8, 2005